

Message Text

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TO AMEMBASSY BRUSSELS

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TAGS: CPRS, BGEN, BE

SUBJ: AMERICAN LAWYERS IN BELGIUM

REF: BRUSSELS 0861

1. IN RESPONSE TO REFTEL DEPT. CONCURS IN EMBASSY MAKING FORMAL DEMARCHE TO THE FOREIGN MINISTRY. SUGGESTED TEXT OF AIDE MEMOIRE FOR THIS PURPOSE FOLLOWS:

2. BEGIN TEXT: "THE GOVERNMENT OF THE UNITED STATES WISHES TO EXPRESS ITS DISAPPOINTMENT IN LEARNING THAT THE PROFESSIONAL IDENTIFICATION CARDS OF AMERICAN LEGAL COUNSELORS ("CONSEILS JURIDIQUES") RESIDING IN BELGIUM HAVE ONCE AGAIN BEEN RENEWED BY THE MINISTRY OF THE MIDDLE CLASSES WITH A NUMBER OF CONDITIONS ATTACHED WHICH WOULD MAKE IT IMPRACTICAL FOR MANY OF THEM TO CONTINUE TO CONDUCT BUSINESS IN BELGIUM.

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"IN 1972, AMERICAN CONSEILS JURIDIQUES IN

BRUSSELS WERE CONFRONTED WITH A SIMILAR SITUATION WHEN THE MINISTRY SENT A LETTER TO MEMBERS OF THE AMERICAN LEGAL COMMUNITY PLACING THEM UNDER RESTRICTIONS SIMILAR TO THOSE IMPOSED IN THE RECENT LETTERS. AT THAT TIME THE EMBASSY MADE A NUMBER OF DEMARCHES TO THE FOREIGN MINISTRY AND THE MINISTRY OF THE MIDDLE CLASSES EXPLAINING ITS POSITION ON

THIS SITUATION THAT NOT ONLY DID THIS ACTION CAST DISCREDIT UPON BELGIUM, AND IN PARTICULAR BRUSSELS AS THE GROWING CENTER OF INTERNATIONAL COMMERCE AND FINANCE FOR THE CONTINENT, BUT IT ALSO VIOLATED THE TREATY OF FRIENDSHIP, ESTABLISHMENT AND NAVIGATION BETWEEN THE UNITED STATES OF AMERICA AND THE KINGDOM OF BELGIUM OF FEBRUARY 21, 1961.

"UNDER ARTICLE 6 (1), (2) AND (4), AMERICAN NATIONALS HAVE THE SAME RIGHT AS BELGIAN NATIONALS TO ORGANIZE AND ESTABLISH OFFICES AND ENGAGE IN ALL TYPES OF GAINFUL ACTIVITIES IN BELGIUM. THOUGH ARTICLE 6(6) PROVIDES THAT THE GOVERNMENT OF BELGIUM MAY PRESCRIBE 'SPECIAL FORMALITIES' IN CONNECTION WITH THE ESTABLISHMENT OF SUCH OFFICES, IT EXPRESSLY STATES THAT THESE FORMALITIES CANNOT BE OF SUCH A NATURE AS TO IMPAIR THE RIGHTS EXTENDED UNDER ARTICLE 6 (1), (2) AND (4). SIMILARLY, THOUGH UNDER PARAGRAPH 5 OF THE PROTOCOL THE TREATY DOES NOT CONFER RIGHTS TO ENGAGE IN GAINFUL ACTIVITY EXCEPT WITH THE AUTHORIZATION OF THE APPLICABLE LAWS AND REGULATIONS, THESE LAWS AND REGULATIONS CANNOT BE USED TO NULLIFY ARTICLE 6 RIGHTS AND TO DISCRIMINATE AGAINST AMERICAN NATIONALS. ENGAGING IN BUSINESS AS A CONSEIL JURIDIQUE IS NOT A STATE-LICENSED PROFESSION COMING WITHIN THE EXCEPTION SET FORTH IN PARAGRAPH 6 OF THE PROTOCOL, AND AMERICAN CONSEILS JURIDIQUES DO NOT ENGAGE IN ANY ACTIVITIES WHICH ARE RESERVED TO STATE-LICENSED PROFESSIONS IN ADDITION, IT IS NOT ONE OF THE FIELDS OF ENDEAVOR SET FORTH IN ARTICLE 6(5) CONCERNING WHICH THE PARTIES EXPRESSLY RESERVED THE RIGHT TO DETERMINE THE EXTENT TO WHICH ALIENS MAY PARTICIPATE. HAD THE GOVERNMENT OF LIMITED OFFICIAL USE

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BELGIUM WISHED TO RETAIN THAT RIGHT AS TO CONSEILS JURIDIQUES, IT COULD HAVE AND SHOULD HAVE SO PROVIDED IN ARTICLE 6(5).

"IN ADDITION, A NUMBER OF THE AMERICAN OFFICES HAVE BEEN CONDUCTING BUSINESS IN BRUSSELS FOR MANY YEARS. ARTICLE 4 (2) OF THE TREATY PROHIBITS THE PARTIES FROM TAKING DISCRIMINATORY MEASURES THAT WOULD IMPAIR THE

ACQUIRED RIGHTS AND INTERESTS OF THE NATIONALS OF THE OTHER IN ENTERPRISES THEY HAVE ESTABLISHED. THE CONDITIONS IMPOSED BY THE LETTERS OF THE MINISTRY OF THE MIDDLE CLASSES WOULD SO RESTRICT THE ABILITY OF THE AMERICAN OFFICES TO ENGAGE IN GIVING INTERNATIONAL LEGAL ADVICE THAT MANY OF THEM WOULD HAVE TO CEASE OPERATIONS. THE LETTERS THEREFORE DEPRIVE THE AMERICAN PRACTITIONERS OF ACQUIRED RIGHTS AND INTERESTS WHICH THEY HAVE LONG EXERCISED IN BELGIUM.

"FORMER MINISTER TINDEMANS AGREED THAT THIS RESULT WAS UNDESIRABLE AND ASSURED THE AMBASSADOR ON JUNE 6, 1972, THAT HE WOULD WITHDRAW HIS LETTERS OF MARCH OF THAT YEAR. THE LETTERS WERE WITHDRAWN SHORTLY THEREAFTER. MINISTER TINDEMANS ALSO STATED TO THE AMBASSADOR THAT THERE WOULD BE NO MODIFICATION IN THE PROFESSIONAL CARDS OF THE U.S. PRACTITIONERS UNTIL A NEW STATUTE REGULATING ALL CONSEILS JURIDIQUES IN BELGIUM WAS ENACTED.

"WE FEEL, ON THE BASIS OF OUR TREATY RIGHTS AND ON THE BASIS OF THE FRIENDLY RELATIONS BETWEEN OUR TWO COUNTRIES, WE MUST PROTEST THE ACTIONS TAKEN BY THE MINISTRY OF THE MIDDLE CLASSES, AND WE HOPE AND EXPECT THAT THESE NEW RESTRICTIONS WILL BE PROMPTLY REMOVED." END TEXT.

3. EMBASSY SHOULD CONSULT WITH REPRESENTATIVES OF AMERICAN LEGAL COMMUNITY ON TEXT OF AIDE MEMOIRE IF THIS IS DEEMED APPROPRIATE AND DESIRABLE. IF EMBASSY WISHES TO MAKE CHANGES IN TEXT, DEPT. WOULD APPRECIATE AN OPPORTUNITY TO REVIEW SAME BEFORE DOCUMENT IS DELIVERED. RUSH

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